APPENDIX A — AFFIDAVIT OF DONALD D. CREAMER

ENDORSED JAN 3 1997

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. SF 96-1623(C)

RAMAH NAVAJO SCHOOL BOARD, INC., a Navajo Tribal Organization and School Board; **PATTERSON OIL CO., INC.**, a New Mexico for Profit corporation; and **GUNDERSON OIL CO., INC.**, a New Mexico for profit corporation,

Plaintiffs,

-vs-

NEW MEXICO TAXATION & REVENUE DEPARTMENT, a State Agency; and **JOHN CHAVEZ**, individually and as Secretary of the New Mexico Taxation & Revenue Department,

Defendants.

AFFIDAVIT OF DONALD D. CREAMER

STATE OF NEW MEXICO)
:ss.
COUNTY OF SANTA FE)

Appendix A

The undersigned, being first duly sworn, hereby deposes and states:

. . .

5. The transportation component of the formula, which remains essentially the same to this day, was derived from and redistributed historic BIA costs for operating school buses on Indian reservation.

6. Since the federal government does not pay state gasoline taxes or any other excise taxes, the BIA's historic school transportation costs did not include any provision for state taxes.

7. The formula adopted by the BIA under P.L. 95-561 therefore does not include reimbursement to Alamo or Ramah or any other contract or grant school of state gasoline or other excise taxes.

FURTHER AFFIANT SAYETH NOT.

s/ Donald D. Creamer

APPENDIX B — AFFIDAVIT OF JIM HOOPER, JR.

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. SF 96-1623(C)

RAMAH NAVAJO SCHOOL BOARD, INC., a Navajo Tribal Organization and School Board; **PATTERSON OIL CO., INC.,** a New Mexico for Profit corporation; and **GUNDERSON OIL CO., INC.,** a New Mexico for profit corporation,

Plaintiffs,

-vs-

NEW MEXICO TAXATION & REVENUE DEPARTMENT, a State Agency; and **JOHN CHAVEZ,** individually and as Secretary of the New Mexico Taxation & Revenue Department,

Defendants.

AFFIDAVIT OF JIM HOOPER, JR.

STATE OF NEW MEXICO)
:ss.
COUNTY OF SANTA FE)

The undersigned, being first duly sworn, hereby deposes and states:

Appendix B

. . .

30. At issue in this case is approximately $128,000 in gasoline taxes and loading fees. This amount is directly traceable to the assessments made by the Taxation & Revenue Department upon Gunderson Oil Co., and Patterson Oil Co.

31. The loss of $128,000 has significantly impacted the federal programs operated by RNSB. Averaged over the three years of each assessment, this money could have been used for direct school or other program needs such as additional books for the library, enhanced computer education, more advanced medical equipment, or one or two additional teachers.

32. The State of New Mexico does not provide education for the vast majority of Ramah Navajo children. Nor does it provide health care for Ramah Navajos, housing assistance, job training or general assistance. RNSB's school and clinic are located off BIA Route 125 in Cibola County, New Mexico, and its buses operate entirely within the external boundaries of the Ramah Navajo Reservation on roads owned or maintained by the federal government or Navajo tribe. Most of the other vehicles operate within the Reservation. When operating off reservation, RNSB vehicles typically purchase gasoline at ordinary retail gas stations and pay state gasoline taxes as everyone else does. Balancing interests among the State, tribal and federal governments as to the gasoline taxes at issue clearly favors the Ramah Navajo School Board, Inc.

Appendix B

33. It is my understanding that, under New Mexico law, if our programs were operated by the BIA or Indian health Service these instant taxes would not be charged for purchase of gasoline since sales of gasoline to federal agencies or instrumentalities are exempted or allowed to be deducted under New Mexico law.

34. I view this differential treatment as discriminatory. It acts as a disincentive to Indian governmental bodies and entities such as RNSB from exercising their rights under the Indian Self-Determination Act and thereby defeats the federal purposes behind the Act.

FURTHER AFFIANT SAYETH NOT.

s/ Jim Hooper, Jr.

APPENDIX C — N.M. LAWS 1997, CH. 192

In computing the gasoline tax due, the following amounts of gasoline may be deducted from the total amount of gasoline received in New Mexico during the tax period, provided satisfactory proof thereof is furnished to the department . . .

C. Gasoline received in New Mexico sold to an Indian nation, tribe or pueblo or any political subdivision, agency or instrumentality of that Indian nation, tribe or pueblo for the exclusive use of the Indian nation, tribe or pueblo or any political subdivision, agency or instrumentality thereof. Gasoline sold to an Indian nation, tribe or pueblo includes gasoline delivered into the supply tank of a government-licensed vehicle of the Indian nation, tribe or pueblo.

APPENDIX D — N.M. LAWS OF 1993, CH. 2 AND N.M. LAWS OF 1979, CH. 166

Section 2. Section 7-13-3 NMSA 1978 (being Laws 1971, Chapter 207, Section 3, as amended) is amended to read:

"7-13-3. IMPOSITION AND RATE OF TAX — DENOMINATION AS "GASOLINE TAX". —

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico. Except as provided in the County and Municipal Gasoline Tax Act and in the Special County Hospital Gasoline Tax Act, no municipality or other political subdivision of the state may impose an excise or occupation tax upon, or measured by, gasoline received, sold, used, stored or handled therein.

B. The tax imposed by Subsection A of this section shall be sixteen cents ($.16) per gallon received in New Mexico.

C. The tax imposed by this section may be galled the "gasoline tax".

AMENDING:

(2) Laws of 1979, Chapter 166

Section 6. Section 7-13-3 NMSA 1978 (being Laws 1971, Chapter 207, Section 3, as amended) is amended to read:

"7-13-3. IMPOSITION AND RATE OF TAX — DENOMINATION AS "GASOLINE TAX". —

Appendix D

. . . D. Any person paying the gasoline excise tax who in turn sells such gasoline to another, whether or not for use, shall include the tax as part of the selling price of the gasoline. Any person thereafter purchasing such gasoline and who subsequently resells such gasoline shall include the increment so paid as part of the selling price of the gasoline.

. . .